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MONSTER HOMES: HOW BIG A HOUSE IS TOO MUCH?

by Paul J. Weinberg

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Introduction

One of the most controversial land use topics currently occupying the thinking of city planners, city councils, and more than a few residents is the dilemma of how to regulate people who move into an existing neighborhood and build a large, massive home that is out of scale to that neighborhood.

Providing a solution is not an easy task. The sheer subjectivity of the decision is leading to a great deal of local legislation and corresponding attempts to circumvent and override that legislation.

The underlying sea of change in social mores and the fundamental way people live fuel the controversy. A recent *The New York Times* article framed the issue beautifully: "When you've got it, flaunt it." In a study released at the end of October 2000, the National Association of Homebuilders found that the average American house keeps getting bigger. In 1999, the average size of a new home was 2,225 square feet. By June 2000, the size hit 2,260 square feet. The average new American spread is 50 percent larger than it was in 1970.

> "And the amazing thing is that during the same period, family size has declined by at least 20%," said Gopal Ahluwalia, the group's research director. Americans not only want more floor space; higher ceiling . . . 9 foot instead of 8. And they want more windows, more light, more glass. And nobody, but nobody, Ahluwalila added, wants to face a wall. Instead, they want to see through one room to another, through that room to the garden and from there out to the trees and the mountains beyond.

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"They not only want more space, they want it to appear bigger than it is," he said.

Living rooms are vanishing, and forget the dining room: half of American homeowners eat in a "vast" kitchen, devouring a meal cooked on a center island, with vegetables washed in a double sink. There is more hardwood, more Corian and more marble. At least one fireplace is derigeur—even if you live in Southern California. And Americans are looking for three car garages, not so much for cars as to park their junk; many use all three bays for storage and relegate the machine to the asphalt.[1]

The underlying social trend that this change in living density and architecture makes is well documented. The trend is not limited to one portion of the United States, either: Palm Beach, Florida; Aspen, Colorado; New Orleans, Louisiana—all have either enacted "monster home" ordinances or are close to doing so. What underlying social trends are driving this change and what is the landscape going to look like when the construction is complete?

These are still open questions. This article is going to explain those trends and the effects that trends are having on various neighborhoods around the country. Planning officials and locally-elected officials viewpoints will also be analyzed; attorney and advocate opinions will be considered; and legislation that has *already* been enacted will be reviewed. Finally, the article will draw conclusions about the propriety of this type of legislation and the effects it is going to have on the fabric of society.

Monster Homes

"Monster homes" were probably best defined by Karen Danielson, the director of residential policy and practice at the Urban Land Institute, a public policy resource and organization composed of land use officials, planning professionals, and architects and ancillary land use professionals such as attorneys and public officials. She stated: "Many home buyers are opting to build new, larger homes that consume most of the space on smaller lots in older neighborhoods. 'Monster houses,' these gigantic structures, are replacing more modest homes that had uniform foot prints." [2]

Joyce Ohlson, the planning director for the City of Aspen, Colorado, is a little more specific. In an interview of January 17, 2001, she pointed out a number of aesthetic factors that signify, in minds of many city planners, what a monster home is: "[It] looms over the sidewalk; no pedestrian orientation. There is a lack of human scale; 'tall, tall windows.'" [3] Karen Danielson echos this point with yet another: "They're failing to match the fabric of the neighborhood."[4]

The very nebulousness of these factors, and the aesthetic subjectivity of deciding them, is what is causing the controversy, polarizing neighborhoods and homeowners in the process. There is no question, though, that this trend is accelerating. The profusion of legislation that is being cobbled together to try to stop monster homes is proof of that. The vigor and vociferousness of the complaints of the neighbors are the catalyst for the rush to legislatively drive monster homes out of existence.

The problem is, however, legislatively stopping a trend in a hurry often leads to more problems rather than less. Inevitably, when money is involved, problems of litigation and the potential for municipalities to have to pay money for "takings" follow.

The cities are trying to legislate the problem out of existence by controlling, as Joyce Ohlson put it, "cubic footage inside." The planning tools that will control volume are stricter set back requirements, limitations on the foot print, a reduction in the "floor area ratio," and height restrictions. Another one is "plate height."

Floor area ratio is the measurement of the amount of space of the horizontal areas of all the floors of a building measured from the exterior faces of the exterior walls compared to the total size of the lot. The smaller the floor area ratio, traditional thinking goes, the smaller the house and, therefore, the less massive the house is considered.

They are not finding that to be the case, though, in Aspen. As Joyce Ohlson points out, Aspen has had to enact, in its ordinances, an additional "cubic footage" component. If you tie the cubic footage to the floor ratio, then the "plate heights" (ceiling and floor heights) get reduced. This link avoids the "massive" and "bulky" appearance that the drafters of the ordinances are trying to avoid.

So how much is too much? Like so many things in the planning world, that depends on whose perspective you look at it from. One of the most high profile disputes on this topic is currently taking place with movie director Steven Spielberg's attempt to build 27,000 square foot equestrian center in a small neighborhood in the Sullivan canyon area of Brentwood, California. Mr. Spielberg has planned a 7 million dollar plus indoor equestrian project in the rustic residential community, provoking an outcry from his neighbors .

Perhaps, however, the *Los Angeles Times* story of December 6, 2000 makes the point more strongly:

Steven Spielberg may churn out hit movies at the box office, but his latest production is getting scathing reviews from homeowners in a rustic Brentwood neighborhood. Hollywood's most successful movie director is quietly making plans to build a 5 story, 27,000 square foot indoor riding ring and stables for his wife, actress and horse lover, Kate Capshaw. But neighbors . . . including Hollywood producers Brian Grazer and Roger

Gimble . . . see the hangar-like Temple of Doom and, fearing a negative impact on property values, they vow to fight the project unless Speilberg dramatically scales back his plans.

The proposed equestrian facility, complete with a domed, retractable roof, subterranean stables, and a spectator platform, is roughly six times the size of a typical home in the distinctively low-key neighborhood. If plopped down on one end of the Rose Bowl, it would stretch well past the 50 yard line.

"It is out of keeping with the neighborhood and out of proportion with the surroundings," says veteran TV producer Gimble, a 30 year resident who lives next door. Neighbors have been told by Speilberg's team, which includes architect Michael Kovac, that the entire project will probably cost more that 7 million dollars. That doesn't include the $5.75 million dollars Spielberg spent to buy the 2.8 acre property in 1999.

The article goes on to quote the attorney the neighbors retained, John Murdock on the aspects of the project that have so irritated the neighbors: "Determined to fight the plans, about a half dozen nearby homeowners have retained land use attorney John Murdock, a veteran of zoning disputes. . . . 'It's just astounding and obnoxious' Murdock said after viewing the Spielberg site last week along with some of his angry clients. 'They're cutting out half the hillside to put in this riding ring. . . the structure is completely alien to the area. . . .' Under the law the riding ring should smaller than the residence but Spielberg's plans call for an equestrian facility more than *ten times* the size of the 2,400 square foot "bunk house." The blue prints include a three story gate house where caretakers will live. '. . .[T]he whole thing is upside-down' Murdock said. 'The stables is the main use, and the house is merely an accessory to the stable.'"

A later, personal interview with Murdock shed further light on the neighbors complaints and provided a blueprint for the complaints of most neighborhoods to the construction of monster homes: "The nature of this problem is the lack of respect for the privacy and peace and quiet of neighbors. It is getting harder and harder to find; this is why monster home ordinances are being proposed. Builders of these homes don't always have respect for these values and fail to keep things in scale."[5]

Murdock gave a very pointed interview to a Santa Monica newspaper on the topic on January 3, 2000: "In this country we have the ability to own and develop private property. It is a right we cherish in America. We will never give up the ability to develop property to its 'maximum potential.' . . . The pressures are enormous when it comes to property rights. . . . Striking a balance is what's called for . . . we are more or less a socialist system—a place of compromise in which both personal and community rights are respected...Using the ongoing problems in the Middle East as an extreme example of conflict over property rights, he says, 'at least in this country we still have legal avenues that can be taken, and will hopefully keep people from attacking each other.' . .. According to Murdock, another insidious force that leads to unrestrained development is 'boosterism.' 'All city councils in all cities have to be for progress; it is what politics is all about . . .'"[6]

Differing Ordinances

The different ordinances enacted in different parts of the country attempt to solve the problem in different ways. The town of Palm Beach, Florida, in an attempt to maintain the character and flavor of their older neighborhoods, restrict the lot coverage. In Palm Beach, a number of neighborhoods exist with small homes, built during the period from the 1930's until the 1970's, of between 2,000 and 4,000 square feet. The homes were originally built by families who lived elsewhere but wanted to use them as vacation homes. As the property values rose, according to Robert L. Moore, the director of Planning, Zoning and Building for the town of Palm Beach, developers came in and "doubled up" the lot coverage so that 5,000 square feet could be built on relatively small lots.

Like Aspen, the town of Palm Beach decided to regulate *cubic* footage, not square footage. Palm Beach established an "RB" zone for minimum lot sizes of 10,000 square feet. These smaller lots became subject to the cubic footage ordinances and forced a reduction in foot-

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age from 5,000 square feet to approximately 3,650 square feet.

Moore was very specific about the reasons the town enacted the restrictions; a silent majority isn't being listened to: "There is a complete changing of the neighborhoods going on here. The vast majority of existing residents object to the volume of the new homes from the street. The developer wants to build higher 'statement' houses. We have had a landmark ordinance since 1979 for the historic buildings that are at least 50 years of age. Are public purpose is to preserve the old moguls homes."[7]

Moore is not alone in seeing the problems caused by the disruption of historic, small scale neighborhoods and the resulting loss of aesthetic character that occurs. New Orleans, Louisiana is in a very similar spot. Mindy Parnes, the City's acting Planning Director, is facing the problem with a more Draconian solution: New Orleans has placed a moratorium on two-family developments in one of its areas. As she put it:

> We wanted an orderly, precise regulation with relational standards. We wanted to regulate the front yard set back and the side yard set back. If the applicant wants to build the building higher, we'll increase the side yard set back. We want more relations to set backs. New homes do not do this.
>
> We're seeing developers tearing down small homes and putting up huge boxes. There are no variations in the walls. We have planning concerns-the neighbors have to look into the house next door. [8]

A newspaper article written in the New Orleans *Times Picayune* sampled the reaction of the neighbors to construction of monster homes:

> Perturbed by demolition of modest lake view houses to make room for the construction of far bigger dwellings, General Haig street resident Gayle Wood recently fired off a letter to city planners.
>
> "I've seen many nice houses, with charm and character, demolished purely for expediency and to maximize profit, and replaced by some large, cloned dwelling, either the 'brick box' or siding covered type in invariably the same few repetitious colors." Wood wrote. "Often these houses take up virtually the entire lot, leaving little or no yard space, and leaving the residences on either side of them feeling over powered."
>
> Wood's criticism mirrors the apprehension that has been surfacing in public debate and opinions around the country as the big house trend spreads into old neighborhoods, with some homes literally casting shadows on the house next door.
>
> Locally, the tear-down, build-big trend is concentrated in Old Metairie and Lakeview where quaint, older houses—often more than 50 years old—have been razed to make room for homes in the 3,500 to 6,000 square foot range with price tags typically ranging between $300,000 and $500,000, if not higher.
>
> While mega houses are leading planners on a hunt for new ideas to control size in aging neighborhoods, owners of large-scale houses say they are simply keeping up with changing tastes and making the most of a costly piece of land.
>
> "I think most of the neighbors welcome the larger house because it increases property values" said Howard Eymard, who is building 3,565-square foot house, priced at $449,000 with four bedrooms and 3 baths on Marshall Foch Street in Lakeview. "Everybody we've talked to in the neighborhood has welcomed us" . . . . However, a "monster houses" workshops during a recent meeting of the National Trust for Historic Preservation in Los Angeles made it clear that the issue is heating up in many cities, and that for now, there is little consensus on how, or when, to impose new regulations. . . . But where big changes are playing out, reactions can be strong. Earlier this year, William Wegman, Sr., a lawyer, paid $415,000 to buy a modest home on Fairview Court in his Old Metairie neighborhood in order head off developers plans to replace it with a 4,000-square-foot home. The developer turned a $75,000 profit with Wegman's defensive tactic.[9]

The defensive tactic of buying the neighbors home to avoid having to stare at a monster home is not limited to New Orleans.

In a Chicago suburb, Glen Ellyn, three neighbors banded together to solve the problem themselves:

> Meg Noyes, Lyn Vogelsinger and Sara Peck had one fear when their neighbor mentioned he was selling their modest ranch on a large lot on north Park Boulevard in Glen Ellyn.
>
> "We didn't want a McMansion next door" Peck said.
>
> So the women and their husbands dreamed up a creative solution-they pooled $450,000 last summer and bought the house and land their own properties surrounded.
>
> Fearing potential buyers would demolish the home anyway, the neighbors subdivided the lot, shaving off 15 feet on each side yard and the backyard to keep for themselves. To subdivide the lot, the house had to come down.
>
> Not only did this add onto their properties, but the neigh-

bors created a smaller lot next door.

"The house that gets built can't be overbuilt" say Noyes, who quickly turned down several offers for the land that weren't in keeping with the group's vision.

"Someone wanted to build three stories with a gymnasium. Another couple wanted a swimming pool in the backyard."

The neighbors, who expect to recover their investment, are now working with a Glen Ellyn builder to erect a two-story, four bedroom stucco Cape Cod with about 3,700 square feet. It will be about as tall as their houses . . . The neighbors' plan is an unusual example of just how strongly Glen Ellyn residents feel about new home size. . . . "I've been a planner for 11 years . . . that's the first time I've seen something (like this) done," said village planner Sandy Williams, about the neighbors' plan."[10]

Clearly, this trend has invaded major underlying philosophical precepts implicit in American society: The right to privacy, to be left alone from intruding eyes and the respect for neighbors. The cause is easy to put a finger on, the rapidly escalating price of land together with changing social mores is driving the trend. Extreme examples like the Glen Ellyn one illustrate how deeply the feelings of the neighbors run.

Conclusion

A final review of some ordinances and case law is in order. Most of the ordinances approach the problem by limiting floor area ratio, "maximum building height and parcel coverage." For example, the City of Santa Monica limits all three. (*See* City of Santa Monica Municipal Code Section 9.04.08.02.070a, c, and d).

The City of San Jose now has an additional layer of administrative review for someone trying to build a single-family home, requiring a "single-family house permit." The new body of law, contained in the San Jose Municipal Code as a new ordinance at Title 20, Chapter 20.44, also limits the floor area ratio and, in essence, ties the size of a house to the size of the lot. As the ordinance itself indicates on its face page: "A single-family house permit would be required if the house exceeds 30 feet or two stories in height, if the floor area ratio of the house exceeds .45, or if the house or site is a designated city landmark . . ."

Aspen's ordinance limits floor area ratio but adds a new "cubic content ratio": ". . . a measure of land use intensity, expressing the mathematical relationship between the cubic content of a building and the unit of land. It is arrived at by dividing gross cubic content, as calculated by multiplying building height . . . times exterior building width times exterior building depth of all structures by the gross area of the lot." (Aspen Municipal Code; Chapter 134, Zoning; Article 1, section 134-2).

Now that we've seen that set backs, cubic content ratio and floor area ratio are being sharply reduced to curb what many neighborhoods fear to be abuses, what remedies do the property owners have if they do not like the restrictions?

That's an interesting question. As Lisa Healy, Managing Editor of *The Boston College Environmental Affairs Law Review* pointed out in her 1998 article "Trophy Homes and Other Alpine Predators: The Protection of Mountain Views through Ridge Line Zoning," the property owners might not have much redress:

> Aesthetic zoning regulations no longer have to weave health and safety language into their stated purpose. In 1954, the United States Supreme Court upheld a municipal plan to beautify an area of Washington, D.C. in the case of *Berman v. Parker*. *Berman* did for aesthetic zoning what *Euclid* had done for comprehensive zoning nearly 30 years before; it gave the Supreme Court stamp of constitutional approval to municipality authorities to zone for purely aesthetic reasons . . . *Berman* set off a landslide of state court decisions upholding the validity of regulations that relied on aesthetics as their *only* purpose in furthering the general welfare. . . . State after state followed the *Berman* . . . precedent, adding strength and precedence to what is now the majority position: Regulations that seek to protect or enhance the visual beauty of the community further the general welfare, and are to be given equal status with the more traditional police power objectives of furthering health and safety. *A majority of states now accept that aesthetic considerations may stand alone as the sole purpose behind zoning ordinances.* (919-922)

Simply put, if the municipality observes due process and notice rights in having public hearings and discussions on their zoning ordinances, and then pass floor area ratio, cubic content ratio, set back, and other restrictions to sharply restrict how big a house you can build, the law will allow them to do just that, at least in a majority of jurisdictions in the United States.

The only real redress that the property owner is going to have is to apply for variances from the restrictions, and, with the vagaries of the language in the zoning ordinances, that isn't going to easy. The 1987 California case of *Ross v. City of Rolling Hills Estates* probably is as typical as any; it involved an application for a variance to permit a two-story addition to a home in an upscale area of Los Angeles county, Rolling Hills Estates. The owners wanted to put a two-story addition to their home that would encroach into a code required 15-foot street-side yard

set back and allow the purposed lot coverage to exceed the code permitted 30 percent limit. The city's planning commission denied the zone variance request and the landowner submitted revised plans. However, because the views of other property owners would be impaired to some degree, those owners were notified by the city of their right to file objections and to appear before the planning commission. They did.

The commission conducted a public hearing and found that the proposed addition did not conform to the objectives of the view protection ordinance, denying approval of the plans.

The ordinance was pretty vague; it had language such as "Protect view corridors . . ," "minimize the appearance of visually intrusive structures . . ," ". . . prevent the obstruction of property owners views by requiring appropriate construction of new structures or additions to existing buildings or adjacent parcels . . .," and "assess the potential view loss from public areas of any proposed major structures as well as alterations and additions to existing structures . . ."

Notwithstanding, the appellate court agreed with the trial court, the city council, and the planning commission that the ordinance was not too vague: "While not itself a zoning ordinance, the view protection ordinance is closely related. 'A substantial amount of vagueness is permitted in California zoning ordinances' in order to permit delegation of broad discretionary powers to administrative bodies . . ." *Ross v. City of Rolling Hills Estates* (1987) 192 Cal. App. 3d 370 at 376, 238 Cal. Rptr. 561. At least thirty-one other states have adopted the majority rule that aesthetics can stand alone as the purpose for a land use regulation.[11]

The issue of monster homes is an easier problem to explain than it is to solve; it is angering a lot of neighborhoods and neighbors and is also touching off economic battles between landowners who want to build homes they can get a lot of money for at sale and adjacent neighbors who do not want to look at those homes. The courts are making clear that they are going to adopt a "hands off" policy on supervising and reviewing these types of land use decisions. How neighborhoods are going to look and how big a home residents are going to tolerate will be decided not in the courts but, most likely, at administrative levels and by the identities, bias, and backgrounds of the members of the planning commissions, design review boards, and city councils actually making these decisions. These battles will therefore be won or lost in the political arena. The potential for abuse, both with overrestrictive regulations and wholesale granting of variances to favored applicants, is obvious; these very abuses will require analysis and resolution if the process of how large a home you can build will be applied to you when you go to build.

Notes

[1] Tracy Rozahon, "American Houses Continue to Grow" *The New York Times*, 25 Oct. 2000, sec. E1.

[2] Danielson, Lange & Fulton, "Retracting Suburbia: Smart Growth in the Future of Housing," *Housing Policy Debate* Vol. 10, Issue 3; (Fannie Mae Foundation 1999): 526.

[3] Interview with the author of January 17, 2001.

[4] Interview of Karen Danielson with the author of January 17, 2001.

[5] Interview of author with John Murdock of January 4, 2001

[6] Clara Sturak, Ed., "Attorney John Murdock: Striking a Balance," *Santa Monica Mirror,* 3 Jan 2000, 1-3.

[7] Interview with Robert L. Moore, Director of Planning and Zoning and Building, town of Palm Beach, with the author, January 9, 2001.

[8] Interview with Mindy Parnes, City Planning Director, City of New Orleans, Louisiana, with the author, of January 18, 2001.

[9] Coleman Warner, "Monster Homes Put Neighbors on a Tax; Builder, Buyers Defend New Trend," *Times Picayune*, 19 Nov. 2000.

[10] Judith Cookis, "Worried Neighbors Buy House Next Door; 3 Divvy Land to Keep Mansion from Being Built," *Chicago Daily Herald*, 27 July 2000 .

[11] Lisa Healy, "Trophy Homes and Other Alpine Predators: The Protection of Mountain Views through Ridge Line Zoning," *Boston College Environmental Affairs Law Review* (1988), n.41.

RECENT CASES

First Circuit Rejects Challenge to the Massachusetts "Dover Amendment" Under the Establishment Clause

In *Boyajian v. Gatzunis*, __ F.3d __ (1st Cir. 2000), the First Circuit Court of Appeals upheld the constitutionality of the Massachusetts state law known as the Dover Amendment, which, among other things, forbids municipalities from excluding religious and educational uses of property from any zoning area. The challenge to the law was made by residents of the town of Belmont, who objected to the construction of a large temple for the Church of Jesus Christ of Latter-Day Saints on the edge of a residential area.

The town residents argued that the Dover Amendment violates the Establishment Clause of the First Amendment. The First Circuit disagreed, based on the Establishment Clause test established by the Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). First, the court determined that the Dover Amendment serves